



POLICE DEPARTMENT

September 17, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Richard Black
Tax Registry No. 898949
41 Precinct
Disciplinary Case No. 84756/08

The above-named member of the Department appeared before the Court on January 22, 2010, March 1, 2010, and May 21, 2010, charged with the following:

1. Said Police Officer Richard Black, while assigned to Police Service Area #4, while on-duty, on or about and between January 25, 2007, and January 3, 2008, engaged in a continuing course of sexual harassment in that on more than one occasion he made inappropriate comments, would stare for long periods of time, and kissed a member of the service, identity known to the Department. (*As amended*)

P.G. 205-36, Page 2, Paragraph C – EMPLOYMENT DISCRIMINATION

2. Said Police Officer Richard Black, while assigned to Police Service Area #4, while on-duty, on or about and between September 25, 2006, and June 15, 2007, engaged in a continuing course of sexual harassment in that on more than one occasion he made inappropriate comments, would stare for long periods of time, and kissed a member of the service, identity known to the Department.

P.G. 205-36, Page 2, Paragraph C – EMPLOYMENT DISCRIMINATION

The Department was represented by Amy Avila, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq. and Cary London, Esq.

The Respondent, through counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Stephen Dreyer, Cadet Carolyn Suarez, Police Officer Geneva Anderson, Probationary Police Officer Jasmine Osorio, and Police Officer Eric DeJesus as witnesses.

Sergeant Stephen Dreyer

Dreyer was an investigator in the Office of Equal Employment Opportunity (OEEO). He was assigned the instant matter on January 16, 2008. Lieutenant Ferry,¹ the administrative lieutenant at Police Service Area (PSA) 4, brought the case to the attention of OEEO. Although the investigation started with one sexual harassment complaint, after interviewing the original complainant, a second complainant was added. The original complainant was Cadet Carolyn Suarez.

Dreyer testified that he first spoke to Suarez on January 16, 2008. He spoke to her in person the next day. Dreyer stated that Suarez told him about conduct that amounted to sexual harassment. Suarez was upset when they spoke, to the point of nearly crying. Suarez told

¹ This member's name was rendered as "Perry" in other parts of the transcript.

Dreyer that Cadet Jasmine Osorio had been subjected to the “same actions” by the Respondent. Eventually Dreyer spoke with Osorio.

Dreyer testified that neither Suarez nor Osorio knew the Respondent, who was the plant manager at PSA 4, before they joined PSA 4. Dreyer told the Court that as part of his investigation he spoke with co-workers and colleagues of Suarez and Osorio. After speaking with both cadets, he learned of a website called theblackbat.com that the Respondent owned and operated. The website sold “pimp and ho gear” (see Department’s Exhibit [DX] 1, screen shots of several pages from theblackbat.com, printed on July 25, 2008). Dreyer admitted that he did not click on every page of the website, nor did he print out every page.

Dreyer testified that during his “interview” with the Respondent, the Respondent confirmed that he operated the website.

On cross-examination, Dreyer affirmed that Suarez had stated in her initial report that the Respondent always asked her to look at the website.

Dreyer admitted that both Suarez and Osorio could not definitely state what dates the incidents allegedly occurred. Some of the allegations were made roughly six months after the incidents took place. None were made contemporaneously. Dreyer admitted that the complaint was filed with OEE0 the day after Suarez was notified that she was being transferred from her assignment to another unit.

Dreyer agreed that OEE0 had a program in which Department members were encouraged to report allegations of harassment. Each precinct had an OEE0 liaison and posters throughout the building informing individuals how to make an anonymous complaint. Moreover, OEE0 printed out pamphlets that are placed throughout precincts. These allowed members to make complaints “in the privacy of their own home.”

Dreyer testified that the complaint was initiated after Suarez had been informed that she would be assigned to work in close proximity to the Respondent. Upon hearing of her re-assignment, she began to cry. She eventually told Ferry that working close to the Respondent made her uncomfortable.

Dreyer testified that he discovered that Osorio had also been subjected to discrimination during an interview in his office with Suarez. According to Dreyer, Suarez tried to make eye contact with Osorio when she was sitting in her office with the Respondent. Suarez was uncomfortable with the Respondent, so when Osorio walked by, Suarez tried to signal her by making eye contact. After the Respondent left, Suarez told Osorio that the Respondent had been sitting in the office staring at her. Osorio confided to Suarez that the Respondent acted in a similar manner toward her.

Cadet Carolyn Suarez

Suarez had been a cadet with the Department for three years, assigned to PSA 4. She was, at the time of trial, a full-time college student studying psychology and education.

At PSA 4, Suarez was assigned to the domestic violence (DV) unit, located on the third floor of the building. Suarez testified that she first met the Respondent toward the end of January 2007, a few weeks after she was assigned to PSA 4. At the time, the Respondent was assigned to the second floor.

Suarez recalled that the first time she met the Respondent was when he came into her office. She was by herself. He asked for two officers, Perez and West, whom she worked with. When she responded that they were not there, the Respondent replied, "[T]hat's good, because I don't trust them in here with you." Suarez asserted that she was confused by that statement.

Suarez stated that in her subsequent encounters with the Respondent, he would "leer" at her, which made her feel uncomfortable. Suarez testified that this occurred more frequently during the summer and winter school intersessions, when she worked at PSA 4 more frequently.

Suarez testified that she usually came into contact with the Respondent two or three days a week. She usually saw him when he came into her office. He would go into a back room, come back out, and stare at her. He would sometimes ask her a question and then continue to stare at her. His actions made her feel uncomfortable.

Suarez testified that in the summer of 2007, she was on her way to work, when she heard sirens behind her. When she turned around, she realized it was the Respondent trying to get her attention. The next day the Respondent said to her, "I was just wondering who that pretty girl was walking in the park, then I realized it was you." Suarez testified that the comment embarrassed her.

Suarez stated that in October 2007, she encountered the Respondent when she was coming into the command. While she signed in, Police Officer Alicia Riggins commented that "they don't really let you around outside, like you are always locked up upstairs in the closet." The Respondent said, "[O]h, the things I would do to her in the closet." Suarez was embarrassed because the Respondent made this comment in front of everyone standing at the desk, including Lieutenant Gulotta. Suarez claimed that Gulotta laughed and said, "Rich, you can't say things like that because that's going to get me in trouble."

Suarez testified that in January 2008, the Respondent entered her office, handed her a shirt and then kissed her on the cheek. Suarez was confused but did not say anything at the time. Another officer was present at the time of the incident, but Suarez did not say anything to him.

Suarez stated that the Respondent told her that he owned and operated a website. Suarez

recalled an incident when she was called downstairs because the Respondent asked her to come down and file some items. As she was filing, the Respondent opened an ad in a magazine. He then pulled up a website on the computer and had Suarez and Police Officer Edwin Delpilar look at it. The website showed scantily-dressed women. She identified DX 1 as "the website" that the Respondent showed her. Suarez testified that the Respondent told her he was selling T-shirts on his website. She testified that looking at the website embarrassed her and that she thought it was inappropriate.

Suarez asserted that she told Osorio, Delpilar, Bumpars (the DV sergeant) and "Ms. Flemmings"² about the Respondent's behavior.

Suarez first met Osorio when she went to PSA 4. She described their relationship as friendly. They did not socialize outside the office and did not attend the same school.

Suarez testified that she first told Osorio about the Respondent's behavior when she was alone in her office and the Respondent walked in and leered at her. At some point Osorio walked in and Suarez "told her with [her] eyes not to leave me." After the Respondent left, Suarez told Osorio that she did not feel comfortable in the Respondent's presence. Osorio responded, "I noticed that ever since you came, he doesn't bother me. He is more bothering you."

Suarez testified that in January 2008, when Flemmings and Bumpars told her to work downstairs in the administrative office with the Respondent, she refused and began to cry.

Suarez explained that at first she did not notify anyone in the Department, because she was a cadet and "they tell you when you go into the process nobody listens to you." She testified that working with the Respondent affected her because she never wanted to leave her office and she was constantly on the lookout.

² This member's name was rendered as "Flemming" in other parts of the transcript.

On cross-examination, Suarez testified that she was 20 years old the first time she made the complaint against the Respondent. At the time she was a freshman at the College of Mount Saint Vincent. When she began working as a cadet in January 2007, she had just finished her first semester of college and was living with three roommates in a residence hall.

Suarez testified that she did not tell her supervisor that the Respondent embarrassed her.

Suarez agreed that OEEEO posters were placed around her precinct. However, she never called OEEEO, spoke to her liaison, or sent an anonymous letter during her first year. She did not "yell" at the Respondent to stop harassing her. Instead, she just avoided him.

Suarez affirmed that there were at least four instances where the Respondent embarrassed her or made her feel uncomfortable. However, she did not write any of these incidents down during her first year as a cadet, as opposed to a log she began taking after she first complained to a supervisor.

Suarez recalled an incident where the Respondent gave her a kiss early in 2008. At the time, she knew him for approximately one year. She described the kiss as "just a kiss on the cheek." He did not grab and embrace her. She admitted that it was a "[H]appy New Year type kiss" that took place around the first week of January. Suarez, however, viewed the episode as, "I work with him. I don't kiss him ever."

Suarez acknowledged that the Respondent never tried to kiss her before. He did not give her a Valentine's Day card or a birthday gift. He never called her at home or on her cell phone. Suarez admitted that he was not the only officer to ask her questions of a personal nature, but "he was the only officer that would stare at me as I walked or did anything."

Suarez acknowledged that she did not complain because she did not want to be transferred to another position. If she was transferred, she would have a different supervisor.

She made her complaint against the Respondent the same day she was told about the transfer. Suarez maintained that the transfer did not motivate her to complain to OEE0. Suarez testified that she told her sergeant that she did not want to work downstairs, and that when she told the sergeant why not, the sergeant said, "[L]et's make the complaint." They went downstairs together and spoke with Ferry. Suarez claimed that Ferry did not want to make the complaint but eventually he did so. Suarez acknowledged that she was never transferred and that she kept her assignment, but that the Respondent was transferred a few months after she filed her complaint.

Suarez testified that during the episode when the Respondent blew the sirens at her, he was with Police Officer Santana.

Suarez testified that she first told Osorio about the incidents with the Respondent sometime between January 2007 and January 2008 when Osorio walked into the office. After that initial encounter, Suarez continued to tell Osorio about incidents with the Respondent that made her feel uncomfortable.

Suarez asserted that she did not know it was possible to file an anonymous complaint. She did know there was an OEE0 number hanging on the precinct wall, which she could call to file a complaint.

Suarez testified that the Respondent never asked her to buy anything from his website. He simply told her to "look at my website." Suarez never looked at the website except when the Respondent showed it to her. She only saw one page of the site. Suarez explained that the Respondent gave her a shirt wrapped in a flyer. On the flyer was the picture with the emblem for website. That same picture was on the website printout which she identified as DX 1. Suarez reiterated that the picture made her uncomfortable because there was a "half naked" girl in the picture.

Police Officer Geneva Anderson

Anderson had been a member of the Department for five years and was assigned to PSA 4 in the East Village/Lower East Side. She was previously assigned to Community Affairs.

Anderson first met Suarez when Anderson was working in the DV unit two years ago. Anderson saw her on a regular basis. Anderson met the Respondent when she first came to the command.

Anderson recalled an incident that occurred in early January 2008 when she was working in the office with Suarez, and the Respondent came in. According to Anderson, the Respondent came in with holiday greetings and gave them both a kiss on the cheek. Anderson testified that she was "just a little bit surprised because I didn't know that they knew each other." When asked, "Did there ever come a time when Ms. Suarez spoke to you about the Respondent?," Anderson replied, "Afterwards, sometime afterwards." Suarez told Anderson that she felt uncomfortable around the Respondent because he would always stare at her.

Anderson testified that she never witnessed Suarez speaking with other people at PSA 4 about her feelings towards the Respondent.

Anderson recalled that she was asked to leave the room when Flemmings told Suarez that she would be moved downstairs. According to Anderson, Suarez started to cry and Bumpars asked her to leave the room.

On examination by the Court, Anderson stated that she worked in DV for a year and a half to two years. She had been out of DV for a couple of months prior to the kiss, but before she left she had been working there for six months to a year.

On re-cross examination, Anderson explained there was a main area in the DV office with four desks. There were also two separate offices. Bumpars' office was located near the

entrance, and another sergeant used the other office. The entire office could fit into the Trial Room. The entrance to the office was off the main hallway on the third floor of PSA 4. There were several offices on the third floor. The administrative office was on the second floor and was "fairly large."

Probationary Police Officer Jasmine Osorio

Osorio started working for the Police Department in July 2006. She had been assigned to the Police Academy since December 2009. When she was at PSA 4, Osorio worked in the training office, then was transferred to Community Affairs at the Housing Borough.

Osorio testified that she first met the Respondent after she had been working at PSA 4 for a month. Osorio said that in their first conversation the Respondent told her that he was thinking of getting a divorce. Osorio stated that the conversation "made no sense because I just started working there." The Respondent worked in the administrative office, which was located on the second floor of PSA 4. Osorio also worked on the second floor; her office was diagonally across from his.

According to Osorio, the Respondent would come into her office and stare at her and talk to her. He bragged about his website, theblackbat.com (see DX 1). His behavior made her feel uncomfortable.

Osorio first became aware of the website when the Respondent pulled it up on the computer in the office. He asked her "what type of cotton T-shirts do women like to wear? Kind of like what you like to wear, tight fitted form." Osorio stated that she did not like looking at the website. She described it as showing "women in scandalous clothing."

Osorio affirmed that in December 2006 she attended the command's Christmas party,

held at Club Remy in Manhattan. The Respondent approached her when she was walking with Sergeant Ruiz, her training supervisor. The Respondent pulled her wrist, gave her a kiss on the cheek and told her how beautiful she looked. Ruiz told Osorio that "if you feel uncomfortable, don't let him pull your arm like that."

Osorio testified that a similar incident occurred when she was standing with Police Officer Amadi, of the training office, in the hallway. Osorio had just given Amadi a hug when the Respondent walked by, pulled her wrist, and gave her a kiss on the cheek. Osorio stated that she did not react in any way because "he has a lot of years on, and I just didn't want any repercussions."

Eventually, Osorio told Ruiz, then Police Officer DeJesus, also of training, and then Suarez. Osorio told DeJesus, who was her supervisor, that she felt uncomfortable when the Respondent came into the office when she was alone.

Osorio testified that she had a working relationship with Suarez. They met one month after Suarez started working. Osorio told Suarez about the Respondent's conduct when she walked upstairs to the DV office and saw the two of them alone in the office. Suarez was sitting and the Respondent was standing three steps behind her. Suarez looked at Osorio, widened her eyes, and "gave me the idea for me not to leave." After the Respondent left the room, they started talking and Suarez told Osorio that the Respondent bothered her and made her feel uncomfortable.

Osorio explained that the Department became aware of the Respondent's conduct when Flemmings, a Police Administrative Aide, asked Suarez to move assignments. Suarez told Flemmings about the Respondent's conduct and said that if she did not believe her, she should ask Osorio. Osorio then told Flemmings that the Respondent made her feel uncomfortable when

he came into her office and looked at her. Osorio explained that she did not report the conduct earlier because she did not want to bring attention to herself.

On cross-examination, Osorio reiterated that she only made a complaint after speaking with Flemmings. She was aware that the precinct had an OEEEO liaison as well as posters saying that one could confidentially contact OEEEO. She was not familiar with the pamphlets, however. She knew she could speak to a supervisor or the cadet coordinator. Osorio could not recall whether she knew at the time of the initial incident that there was a chain of command that she could go to discuss her allegations. She was, however, told on her first day of work who her supervisor was – Ruiz.

Osorio admitted that the Respondent never prevented her from seeking help or making a complaint.

Osorio testified that the Respondent's kiss at the Christmas party was not a long one. He did not offer any holiday greeting. Osorio testified that he was the only person who gave her a kiss that day and told her that she looked good. Osorio explained that the Respondent pulled her to him when he kissed her.

Osorio testified that Ruiz told her, "[D]on't let him do that to you." Osorio told Ruiz she was uncomfortable. According to Osorio, Ruiz did not speak with the Respondent about their conversation.

Osorio stated that she did not make a complaint the same day that she had a conversation with Suarez about their feelings toward the Respondent. Additionally, she did not discuss her feelings with any of her supervisors. She did, however, tell DeJesus that she felt uncomfortable around the Respondent. Osorio emphasized that she did not disclose any details to DeJesus. As a result of their conversation, DeJesus started closing the door to the office. Osorio could not

recall when she informed DeJesus of this.

Osorio testified that she was working in the training office when Flemmings walked in and asked to speak with her in her office. According to Osorio, Flemmings, Suarez, Ferry and Lieutenant Gulotta were present during the conversation. Osorio could not recall the date that this conversation took place. Osorio testified that Flemmings asked her about the Respondent's misconduct and whether he made her feel uncomfortable. She also asked about what Suarez had told Osorio. They asked her to fill out an official complaint, but Osorio could not recall if she actually filled out any forms or if she spoke with an OEEA representative. After this meeting, Suarez and Osorio discussed the incident among themselves.

Osorio stated that the Respondent asked her to look at his website and asked her advice on fitted clothing. Osorio testified that she could not recall answering the Respondent's question about the fitted clothing. According to Osorio, the Respondent knew that she liked fitted T-shirts because she wore them to and from work. Osorio denied buying anything from the website, or having placed an order for an "extra extra small shirt, fitted T-shirt, for \$10." Osorio claimed that while she did not pay for the T-shirt, the Respondent "annoyed me to the point that I walked to his car and he had gave me the T-shirts."

On re-direct examination, Osorio stated that the Respondent pulled her toward him two or three steps, by her wrist, in order to kiss her. Osorio stated that she saw on the website that the Respondent sold "pimp and ho gear" and accessories.

Police Officer Eric DeJesus

DeJesus had been a member of the Department for eighteen years. He was assigned to the training office at PSA 4 since 2006 or 2007. DeJesus testified that Osorio worked as a cadet

in his office. He was her training officer and saw her often. He described their relationship as cordial.

DeJesus stated that he had known the Respondent since he became the training officer at PSA 4. The Respondent was the building manager of the building where DeJesus's command was located.

According to DeJesus, he would come to the office to find the Respondent there while Osorio was working. DeJesus testified that the Respondent would sit there having small talk with Osorio. He described it as "nothing out of the ordinary that I could see." DeJesus would ask what he needed, and the Respondent would reply with something "not job related" or leave the office. DeJesus testified that this happened a few times. He stated that Osorio would "usually get flustered or . . . aggravated" after the Respondent left the office. It started to affect her work. She would misfile or forget what she was supposed to do.

DeJesus testified that he asked Osorio what the problem was. According to DeJesus, Osorio told him that the Respondent "makes her nervous and uncomfortable." She did not tell him any other details.

DeJesus testified that he told the Respondent he did not "want him in the office unless myself or the sergeant was in the office." He could not recall when he told this to the Respondent. The Respondent did not say anything in response but perhaps "snickered." After their conversation, the Respondent stayed away from the office unless someone else was present.

On cross-examination, DeJesus testified that as a training officer he had to instruct members of the service about department policies and procedures. This included making a complaint against another officer, the responsibilities that members have with regard to misconduct, and what steps should be taken when filing an OEEO complaint. DeJesus explained

that when Osorio told him that she was uncomfortable he did not tell her that she could speak to OEEEO because “she did not clarify to me what made her uncomfortable.” Additionally, he “thought [he] took care of the situation when [he] told the officer not to be in the office.” He did not recall whether he told his supervisor, Ruiz, that Osorio felt uncomfortable around the Respondent.

DeJesus testified that Osorio never told him that the Respondent kissed her. She did tell him that “she doesn’t like the way he looks at her.” DeJesus was also unable to recall how long he worked in the office before Osorio told him that she felt uncomfortable around the Respondent.

DeJesus testified that he never saw the Respondent physically or verbally act inappropriately toward Osorio.

DeJesus explained that after Osorio complained to him about the Respondent, he did not report it to a supervisor because his immediate supervisor was out due to an injury. He did, however, inform Lieutenant Rivera, who worked with the Respondent and was the administrative lieutenant at the time. According to Osorio, Rivera asked what was going on and DeJesus replied that he did not know. Rivera left it at that.

Therefore, DeJesus spoke with the Respondent and did not take any further action. DeJesus believed that by doing so he was “saving him for any more problems with the cadet.” DeJesus stated that after he spoke with the Respondent, the Respondent continued to come into the office, but only when other people were there. According to DeJesus, Osorio stated that she was not uncomfortable as long as she was not alone with the Respondent.

On re-direct examination, DeJesus testified that he did not hold a grudge against the Respondent. He contended that he realized the Respondent was coming into the office before

Osorio complained to him.

On re-cross examination, DeJesus explained that when he told the Respondent “not to be in the office I thought that was clear enough help to let him know not to be in the office alone with the cadet.” When asked for his opinion as to whether Osorio’s feelings had to do with any type of sexual harassment, he stated, “I don’t know what I think. I don’t know what made her uncomfortable. I don’t know what was said. All I know is what the cadet told me.” DeJesus told the court that he believed his actions helped the Respondent.

The Respondent’s Case

The Respondent called Lieutenant Marianne Gulotta and Police Officer Chibuzo Amadi as witnesses, and he testified on his own behalf.

Lieutenant Marianne Gulotta

Gulotta had been a member of the Department since 1993. She was assigned to PSA 4 after being promoted to Lieutenant.

Gulotta testified that she first met the Respondent in the summer of 2005 after she was assigned to PSA 4. At that time, the Respondent was the planning officer or plant manager. His responsibilities included making sure that the building ran properly and that building repairs were completed. The Respondent shared his office with another officer. She stated that as plant manager, the Respondent had “unfettered access to all parts of the building.”

Gulotta testified that when she was the second-platoon commander, there were a number of cadets assigned to PSA 4. Although the cadets were supervised by the sergeant to whom they were assigned, the lieutenant had ultimate responsibility.

Gulotta testified that while she worked at PSA 4, from June 2005 until November 2007, she had contact with the Respondent on a daily basis. She never witnessed him exhibiting inappropriate conduct towards any member of the service.

Police Officer Chibuzo Amadi

Amadi had been a member of the Department since December 2007. He used to work at PSA 4, where he was assigned to patrol, and later as a training officer. At the time of trial, he was assigned to Counterterrorism.

Amadi testified that he had known the Respondent since 1998. Occasionally, they worked as partners when the Respondent was the vehicle coordinator. They also socialized together. Amadi also knew Osorio because she worked with him in the training office.

Amadi testified that he saw the Respondent and Osorio interact with each other, but never in an improper manner. Osorio never informed him that she was uncomfortable being alone with the Respondent or that the Respondent would come into her office without reason and try to talk to her, make inappropriate comments, or stare at her. He never saw the Respondent "sexually harass" Osorio.

The witness recalled that he visited the command in the spring of 2007 after he had been transferred. "Everybody was saying hello to everyone," but he could not recall the Respondent kissing Osorio on the cheek.

Amadi testified that if cadets did not understand their assignment, they would come to him with questions. If he could not help them, they would go to the training sergeant. He stated that Osorio never told him that she had a problem with the Respondent, even though she could have come to him with a problem.

Amadi stated that he was familiar with OEEO posters that specifically referenced sexual harassment. To his knowledge, these posters were hanging in the command at the time that he worked at PSA 4. He testified that either he or the Respondent hung those posters.

Amadi was aware that the Respondent owned an Internet business. He believed that the website sold T-shirts and necklaces. He stated that the website did not make him feel uncomfortable. Amadi also stated that to his knowledge, no cadets had ever indicated that they were offended by the website.

On cross-examination, Amadi described his relationship with Osorio as professional. When Amadi returned for the visit, both the Respondent and Osorio were in the hallway with a number of others. Several people were speaking to each other. He admitted that he was not focusing all of his attention on Osorio.

Upon questioning by the Court, Amadi testified that a cadet could go directly to the training sergeant for help, but he could not think of a specific reason why she would not go to him for help. He was the only Police Officer in the training office.

The Respondent

The Respondent had been a member of the Department since 1991. While assigned to PSA 4, he was first assigned to patrol, then became the building manager and vehicle coordinator. He worked as building manager and vehicle coordinator for five years. He had various duties, including hanging up OEEO posters.

The Respondent testified that while he worked at PSA 4, the command was located in a new building on Avenue C between East 8th and 9th Streets. As building manager, the Respondent shared an office with Riggans. Their office was located within the administrative

office on the second floor.

The Respondent stated that although he was the building coordinator, he was occasionally assigned to patrol. Some days he would be out the entire day and other days he would work inside the building. He asserted that he had access to the entire building. He normally worked day tours. He estimated that during the day there were usually around 100 other people in the building.

The Respondent testified that he likely met Suarez in January 2007. Although he could not recall exact details of their meeting, he stated that most likely he first met her when he had to go to her office to get supplies. He testified that he had basically no contact with Suarez or with any other cadets. The Respondent testified that he would sometimes go to the training office to talk with Amadi and Ruiz.

The Respondent stated that the cadet he saw most frequently was Osorio, who worked in the training office on the second floor with Ruiz, Amadi, and DeJesus. He testified that he had a good relationship with Ruiz and Amadi, but that he thought DeJesus was somewhat arrogant. He never complained to his superiors about his relationship with DeJesus. The Respondent denied that DeJesus ever approached him about his conduct.

The Respondent testified that he likely went into the training office once a day to speak to the officers who worked there. Sometimes he would eat breakfast there with Ruiz or Rivera. He reaffirmed that he never went into the training office to speak with Osorio.

The Respondent told the court that he requested permission for off-duty employment. The application was for theblackbat.com, which sold T-shirts and belt buckles. He did not manufacture the merchandise himself. He told all his coworkers about the website, and brought a T-shirt to work that two cadets had ordered from him. He explained that they ordered the T-

shirts after they saw them in a hip-hop music magazine that the Respondent had showed them. According to the Respondent, Osorio asked for an extra-tight white shirt telling him that “it was summer and [she] wanted to look good.” The Respondent told Osorio that he did not have it in stock and would have to order it. He recalled this because of the special size and that he had to special-order it from the manufacturer, who charged him extra for it. About three weeks after he ordered the T-shirt, he gave it to Osorio, and she paid \$10 for it.

The Respondent testified that Osorio told him she liked the website and that she asked him how he started it and why he did not have more items for women. The Respondent explained that he was targeting younger men. He acknowledged that he had pictures of semi-dressed women on the website. He got the images from a graphic artist that he hired.

The Respondent testified that he had at most five “personal conversations” with Suarez and that he was simply “cordial and friendly” toward her. When asked, “Anything of a personal nature? Any in depth conversations with her?,” the Respondent admitted talking to Suarez about the website, “like I told everyone else.” He stated that Suarez looked at the website, liked it, and ordered a red T-shirt. He did not recall if he charged her.

When asked if he had “conversations of a personal nature” with Osorio, besides either work or the website, the Respondent answered, “We didn’t have that kind of relationship. No, not that I recall.” He did not recall making any comments to Osorio about her appearance. He never talked to her about her relationships with other men. In fact, any conversations were “very generic.”

The Respondent testified that he did not make any personal comments to either cadet while he was discussing theblackbat.com with them.

The Respondent stated that sometime in 2007, he was informed by Ferry, the

administrative lieutenant, that a cadet made a complaint against him. He told the court that he was “completely in shock.” Several days later, a second cadet made a complaint against him.

The Respondent asserted that prior to the conversation with Ferry, no other uniformed member of the service ever spoke to him about his relationship with Osorio. He did not have any contact with either Suarez or Osorio in the time between the first and second allegations. He testified that during this time, there were either three or four cadets at PSA 4. There was a female cadet in the administrative office on the second floor. Rivera and Riggins worked in that office. The entrance to the office of Amadi, DeJesus and Ruiz was on the opposite side of the hallway.

The Respondent testified that he attended the 2007 holiday party, which was held at a restaurant in downtown Manhattan. He estimated that 75 people attended the party. Alcohol was served, but he did not recall having any drinks. When asked whether he had any physical contact with any of the cadets, he replied, “Physical contact meaning greeting people? . . . Yes, I was greeting everyone.” He stated that he hugged or “cordially” shook the hand of his male colleagues. He likely greeted his female colleagues in the same manner, possibly with “a peck on the cheek.”

The Respondent stated that after the allegations were made, he remained at PSA 4 for a couple of months, possibly a year, then was transferred. The cadets who made the allegations against him remained there.

On cross-examination, the Respondent claimed that Suarez and Osorio “loved” the website. He acknowledged that during his official Department interview, he admitted telling Osorio to visit the website. He explained that he was targeting her specific age group because that is his customer base. The Respondent denied showing Osorio a magazine ad about the site.

The Respondent testified that he had only minimal contact with Suarez.

The Respondent noted that on occasion, when Osorio was asked to leave the office because he had to meet with Rivera (the administrative lieutenant), she became angry.

The Respondent maintained that DeJesus was lying about Osorio becoming upset. The Respondent noted that he advised Rivera not to assign DeJesus to that position because he was “combative and he would be a negative to the team that we had.”

When asked about Anderson’s testimony, the Respondent affirmed that he had a good relationship with the witness. He did not recall kissing Suarez, but emphasized, “I’m not saying that it’s impossible, but I don’t recall.” He explained that “it’s possible I said hello to a whole bunch of people in the office, and Happy New Year,” and that his greeting might have included a kiss on the cheek.

The Respondent denied showing the screenshots in DX 1 to the cadets, explaining, “I don’t recall exactly what I showed them. I – It’s possible that there was a magazine ad that I had at the time.”

The Respondent acknowledged the “Iced out Pimp and Ho Gear” category on the website, but stated that he removed this category “very quickly” because “I didn’t care for it, upon thinking about it.” Specifically, he explained that he did not like the “Pimp and Ho” terminology.

Upon examination by the Court, the Respondent emphasized that he “didn’t stare at anyone.” He further explained that when he kissed people at the Christmas party, he was just “trying to be friendly and cordial with the people that I work with.” He also stated that on occasion he would greet many of the women in the office that way.

The Respondent explained that the significance of the title of the website came from

Batman, whom he intended to adopt as his online retail persona.

FINDINGS AND ANALYSIS

The Respondent is charged in two specifications with engaging in a course of sexual harassment against two cadets, Carolyn Suarez and Jasmine Osorio. Both worked in PSA 4, where the Respondent was assigned as the plant manager. The specifications are identical except for dates, and each names the complainant as "identity known to the Department." In a pre-trial appearance on December 1, 2009, the Advocate stated that Specification No. 1 referred to Suarez and Specification No. 2 referred to Osorio. Both specifications charge the Respondent with violating Patrol Guide § 205-36 by making "inappropriate comments," by "star[ing] for long periods of time," and by "kiss[ing] a member of the service." The section of the Patrol Guide cited by the Department, paragraph (c) on page 2, prohibits conduct that "has the effect of unreasonably interfering with an individual's work performance *or* creating an intimidating, hostile or offensive work environment" (emphasis added). Under federal law, whether conduct unreasonably interferes with work performance is one factor in determining whether a hostile work environment existed. See Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993).

Suarez worked in the domestic violence office on the third floor, beginning in January 2007. She recounted inappropriate comments by the Respondent. For example, she said that the Respondent came into the DV office looking for two officers, and when she said they weren't there, he said that was a good thing "because I don't trust them in here with you." One time, the Respondent told her he saw her in the park, saying, "I was just wondering who that pretty girl was walking in the park, then I realized it was you." Once, when she was signing in, an officer said that it was like Suarez was always "locked up upstairs in the closet" because she was never

around. The Respondent interjected, “[O]h, the things I would do to her in the closet.”

Suarez testified that the Respondent leered at her. He would enter the DV office, go into a back room, come back out, and stare at her.

Suarez testified that in January 2008, the Respondent entered her office, handed her a shirt from his online business, and kissed her on the cheek. Anderson, a DV officer, confirmed this, but stated that he kissed both of them and that it was in the way of holiday greetings. Still, Anderson viewed the Respondent’s actions as strange because she had not thought he and Suarez knew each other that well.

Suarez discussed the Respondent with Osorio, her fellow cadet. Osorio entered the DV office while the Respondent was there. Suarez “told her with [her] eyes not to leave me.” After the Respondent left, Suarez told Osorio that she did not feel comfortable in the Respondent’s presence. Osorio remarked that since Suarez had started working at the command, the Respondent was bothering Osorio less and Suarez more.

Osorio worked in the training office on the third floor. Toward the start of her time at PSA 4, the Respondent told Osorio that he was thinking of getting a divorce. Osorio testified that the Respondent would come into her office and stare at her and talk to her. The Respondent kissed her during the 2006 Christmas party and during Amadi’s visit to the command (Amadi timed this as occurring in spring 2007).

These allegations first came to light in January 2008, when Suarez was informed that she would be working in the administrative office with the Respondent. She refused and began to cry. Once the complaint was lodged with OEE0, Osorio came forward.

The Respondent denied having conversations of a personal nature with either Suarez or Osorio, save for the discussions about his website, theblackbat.com. He denied staring or leering

at them. He conceded that he kissed people at the Christmas party as a form of greeting, but could not recall whether Suarez was one of these individuals. Amadi testified that when he visited, “[e]verybody was saying hello to everyone,” but he could not recall whether the Respondent kissed Osorio.

The Respondent’s position was that he was simply a gregarious individual, who was assigned to work in the command building and tried to make the best of it by being friendly with others. Overly-friendly conduct can, in certain circumstances, constitute sexual harassment. See Ackerman v. National Fin. Sys., 81 F. Supp. 2d 434, 436-38 (E.D.N.Y. 2000) (discussing over-friendliness as one of plaintiff’s claims that allowed sexual harassment case to survive summary judgment motion). In that vein, the Court finds that the Department proved that the Respondent greeted both Suarez and Osorio with a kiss. The Respondent basically admitted that he kissed Osorio at the party, as he did others, and Amadi indicated that everyone was “saying hello” during his visit. Anderson corroborated the kiss of Suarez in January 2008. It was inappropriate of the Respondent to kiss these two cadets, even as a platonic holiday greeting, because by his own admission he barely knew them.

Because of the way the Department wrote the specifications, however, that is not the end of the inquiry. The Respondent is also charged in each specification with leering or staring at the cadets. Additionally, he is charged in each specification with making inappropriate comments to each cadet.

Suarez’s testimony was indirect and confusing. For example, she testified on direct examination that it was her re-assignment to the second floor that prompted her complaint. Only on re-direct was it discovered that she merely was assigned to help out downstairs. When asked if “there ever c[a]me a time when you told anyone of Respondent’s behavior towards you?,”

Suarez answered that she told Osorio, Delpilar, Bumpars, and Flemmings. Not only was nothing more said about Delpilar, but it was only later in Suarez's testimony that the Court learned that Bumpars and Flemmings were only informed when the Respondent made her "official" complaint. Perhaps most importantly, Suarez admitted that she did not come forward at first because she liked where she was working. The Court found Osorio's demeanor to be combative, not only toward counsel but the Court as well, to the point of questioning its directive to answer the Respondent's attorney's question as given. Cf. Case Nos. 83752/08 & 84360/08, signed Dec. 9, 2009 (the four sexual-harassment complainants testified "in a direct and forthright manner").

The topic of the Respondent's website, theblackbat.com, was discussed heavily at trial. He had permission from the Department to run the website as off-duty employment. The site was not pornographic in the normal sense: it did not depict overtly sexual conduct. It showed one woman with her buttocks partially exposed, but otherwise clothed, and another woman posing in a bikini.

At the very least, evidence about the website was *res gestae*, or part of the narrative of events, so the Court took it into evidence. At most, it proved the Respondent's state of mind concerning his interactions with the cadets. The Court has not considered, however, anything that he may have said about the site as "inappropriate statements" because these were not charged against him. Upon the Respondent's request, the Department filed a bill of particulars dated January 13, 2010, giving further details of the charges. The website was not mentioned at all. Therefore, the statements and conduct of the Respondent surrounding the website are admissible to show, at most, his state of mind when interacting with the cadets. See Distasio v. Perkin Elmer Corp., 157 F.3d 55, 61 (2d Cir. 1998) (state of mind is often at issue in sexual harassment cases).

The independent witnesses to the Respondent's alleged conduct do not support the Department's case. For example, Anderson, one of the DV officers, testified that she saw the kiss by the Respondent to Suarez as odd. Yet Suarez apparently did not complain to her until she made her official complaint. At the very least, the Court cannot conclude from Anderson's testimony that Suarez confided in her any time before that. Nor did Anderson indicate that Suarez appeared to be uncomfortable with the kiss when it actually occurred.

Several of the alleged inappropriate statements were amenable to corroboration by independent witnesses, but were either uncorroborated or refuted. Suarez testified that when she was walking in the park and the Respondent allegedly blew his vehicle's sirens at her, he was with Police Officer Santana. Santana did not testify. When she was signing in and the Respondent allegedly made the comment about them being in a closet together, both Police Officer Riggins and Lieutenant Gulotta were present. Not only did Riggins not testify, but Gulotta declared that at no time during her tenure at PSA 4 did she observe the Respondent do anything inappropriate toward any member of the Department.

Osorio claimed that when the Respondent kissed her at the command's Christmas party, Sergeant Ruiz observed it and told her not to let him do that to her. If that occurred, it would show that Ruiz realized something was amiss with the Respondent's conduct toward the cadet. Yet Ruiz did not testify. Even DeJesus, who testified that he asked the Respondent to stay out of Osorio's office, stated that he did not know why the cadet was uncomfortable. This is important because sexual harassment would not be proven merely as a result of the cadets not liking the Respondent's presence. Cf. Romano v. Stora Enso Corp., 2010 U.S. Dist. Lexis 24937, *51 (E.D.N.Y., Feb. 12, 2010) (plaintiff may not have liked alleged harasser, and may have felt uncomfortable at work because of the conduct, but that does not establish hostile work

environment). DeJesus testified that he explained the situation to Lieutenant Rivera, another supervisor who was not called to testify, but who also might have corroborated the assertion that Osorio felt uncomfortable around the Respondent, and for what reason.

Staring or leering can be the basis of a sexual harassment claim. See, e.g., Cruz v. Coach Stores, Inc., 202 F.3d 560, 571 (2d Cir. 2000). Here, the complainants testified that the Respondent would stare at them, but they also testified that he would do this while he was talking to them. The Court does not see how looking at someone while talking to her, without more, unreasonably interferes with work performance. There was no indication, beyond the cadets' subjective belief, that the Respondent's staring was sexual in nature, i.e., that he was observing their bodies in a lascivious way. Cf. Cruz, 202 F.3d at 571 (plaintiff alleged that harasser would stand very close to women while talking to them, and would look at them "up and down in a way that's very uncomfortable").

The difficulty was illustrated on the cross-examination of Osorio, when she was asked by the Respondent's counsel if other male officers stared at her. Osorio answered, "If somebody is glancing, it's different than a stare. A glance is like okay I stare at you. A stare is not. A stare is when I am staring at you and continue to stare, and when you feel like you are being annoyed and -- it's hard. Because as a female, you can tell when somebody is staring at you and they're thinking dirty thoughts." Osorio added that no one else stared at her to the point where she felt uncomfortable, noting, "Everybody stares," including women. Yet not two questions later, she asserted that the Respondent "only stared. Everybody else is a glance." Thus, it is difficult to ascertain exactly what it was that the Respondent allegedly did.

In a situation like the case at bar, ultimately the question comes down to whether the Department proved its case to the standard required in this forum. With regard to these

specifications, that means that the complainants' assertions must have more weight than the Respondent's denial. There is not sufficient, reliable, or independent evidence to support the cadets' version, and there are serious questions about their credibility.


As a party to the action, the Respondent was an interested witness. See People v. Agosto, 73 N.Y.2d 963, 967 (1989) (defendant is interested witness as a matter of law); Coleman v. New York City Transit Auth., 37 N.Y.2d 137, 142 (1975) (an actor in the transaction, having motive to shield self from blame, is an interested witness, even if not a party). Other than his interest in the case, and his view that he did nothing wrong in being gregarious, there are no apparent reasons to disbelieve the Respondent. There are greater problems with crediting the accounts of the complaining witnesses.

Thus, the Department failed to meet its burden to prove, by a preponderance of the credible evidence, that the Respondent "engaged in a continuing course of sexual harassment" against each complainant as defined in the specifications. Accordingly, he is found Not Guilty.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED
NOV 22 2010

RAYMOND W. KELLY
POLICE COMMISSIONER